

PERSONNEL ADMINISTRATIVE INSTRUCTIONS

Subject: Family and Medical Leave (FMLA)

I. GENERAL:

This instruction establishes the guidelines for administration of absence from work due to Family and Medical Leave (FMLA) and to ensure minimum compliance with the **FMLA Act of 1993**.

II. ELIGIBILITY:

Employees who have been employed by the city for at least 12 months and who have worked at least 1,250 hours in the 12 months immediately preceding the date the leave begins, are eligible to take family and medical leave of absence under this policy.

III. DESIGNATION OF LEAVE:

It is the responsibility of the Department Head to designate FMLA leave in the appropriate circumstances even when the employee does not request FMLA leave and/or when it is the employee's preference not to designate leave as FMLA.

IV. MAXIMUM AMOUNT OF LEAVE:

An eligible employee may be absent from work for a maximum of up to twelve (12) workweeks in a twelve-month period.

V. REASONS FOR LEAVE:

- The birth of the employee's child and to care for the newborn child;
- The placement of a child with the employee for adoption or foster care;
- To care for the employee's spouse, son, daughter, or parent with a serious health condition; or
- A serious health condition which makes the employee unable to perform the essential functions of the employee's job.

For the purpose of family and medical leave:

A "child" is defined as the eligible employee's biological, adopted, or foster child, stepchild, legal ward, or a child of a person standing in loco parentis, who is under 18 years of age or 18 years or older and incapable of self-care because of mental or physical disability;

A "spouse" is defined as the legally recognized husband or wife of the eligible employee;

A “parent” is defined as the biological parent of the eligible employee or an individual who stood in loco parentis to the eligible employee when the employee was a child. This term does not apply to the employee’s parents “in-law.”

A “serious health condition” is defined as an illness, injury, impairment, or physical or mental condition that involves:

- a. Any period of incapacity or treatment in connection with or consequent to inpatient care (i.e., an overnight stay) in a hospital, hospice, or residential medical care facility;
- b. Any period of incapacity requiring absence from work, school, or other regular daily activities, of more than three calendar days, that also involves continuing treatment by (or under the supervision of) a health care provider; or
- c. Continuing treatment by (or under the supervision of) a health care provider for a chronic or long-term health condition that is incurable or so serious that, if not treated, would likely result in a period of incapacity of more than three calendar days; or for prenatal care.

“Continuing treatment” by a health care provider is defined as one or more of the following:

- a. The employee or family member in question is treated two or more times for the injury or illness by a health care provider.
- b. The employee or family member is treated for the injury or illness two or more times by a provider of health care services under orders of, or on referral by, a health care provider, or is treated for the injury or illness by a health care provider on at least one occasion which results in a regimen of continuing treatment under the supervision of the health care provider. (e.g. a course of medication or therapy, to resolve the health condition.)
- c. The employee or family member is under the continuing supervision of, but not necessarily being actively treated by, a health care provider due to a serious long-term or chronic condition or disability that cannot be cured.

Acceptable “health care providers” may include doctors of medicine and osteopathy; podiatrists, dentists, clinical psychologists, optometrists, nurse practitioners and nurse midwives, Christian Science practitioners, and to a limited extent, chiropractors.

VI. PROCEDURE:

Employees requesting family and medical leave (FMLA leave) shall submit a leave request to their supervisor 30 days prior to the date the leave is intended to begin where the need for leave is foreseeable. The city recognizes that unexpected emergencies can arise where the need for FMLA leave is not foreseeable and it not possible to provide 30 days notice of the intended leave

or any advance notice. The city shall notify the employee of its designation within two (2) business days of a request for leave or within two (2) business days of receipt of information from the employee or a spokesperson for the employee indicating that the leave is FMLA-qualifying. The city may inquire further as it deems necessary to obtain sufficient information about the need for leave to determine if it should be designated FMLA leave. If the employee fails to provide necessary information leave may be denied.

A. Use of Paid Leave

An employee taking FMLA leave will be required to first use any appropriate accrued leave (sick and/or annual) as appropriate for any of the 12 workweeks of FMLA leave. The remainder of the leave will be unpaid.

B. Medical Leave

In cases where the employee is requesting FMLA leave due to the employee's own serious health condition or that of a spouse, child, or parent, the city requires the employee to submit written medical certification verifying the need for the leave. The city, at its own expense, may require the employee to receive a second or third medical opinion. If the leave is being requested to care for a spouse, child, or parent, the medical certification must state that the employee is needed to care for the spouse, child, or parent, and must provide an estimate of the amount of time that the care will require.

1. On-going Certification

Employees may be required to submit to their supervisor written recertification of the need to remain on the leave.

2. Return to Work Certificate

Employees taking leave to care for their own serious health condition may be required to submit a "fitness-for-duty" certification before returning to work, stating that the employee is able to resume his or her position. Each employee will receive notice of this requirement when they request FMLA leave or as soon as practical after the employee's leave commences.

C. Family Leave

Employees requesting FMLA leave for the birth or adoption of a child may be required to provide certification within 15 days of the commencement of leave that a birth or placement for adoption of foster care has actually occurred.

VII. INTERMITTENT LEAVE:

Family and medical leave which is taken to care for the employee's own serious health condition or to care for a sick family member may be taken intermittently or on a reduced leave schedule when medically necessary. Employees requesting family and medical leave for the birth or adoption of a child cannot take intermittent leave or a reduced work schedule for any part of the leave. When an employee requests intermittent leave, the city reserves the right to temporarily

transfer the employee to an alternative position, with equivalent pay and benefits, which better accommodates recurring periods of absence or a part-time schedule.

VIII. MARRIED COUPLES EMPLOYED BY THE CITY:

When both spouses are employed by the city, married couples are entitled to take a combined total of twelve (12) workweeks of FMLA leave for the birth or care of a newborn, to care for a child placed for adoption or foster care, or to care for a parent.

For purposes of calculating each spouse's family and medical leave balance, however, only the hours actually taken by that spouse will count against his or her family or medical leave balance if the employee needs medical leave to care for their own serious health condition or to care for the serious health condition of the employee's spouse or child.

IX. STATUS OF BENEFITS WHILE ON LEAVE:

While an employee is on approved FMLA leave, he/she will continue to be covered under the city's group health insurance, so long as the employee continues to pay the employee portion of the health care premium costs.

If paid leave is used for any portion of the family or medical leave, employee premiums will be deducted through regular payroll deductions.

At the time an employee begins unpaid family and medical leave, he/she shall receive written instructions detailing the time and manner in which employee premiums are to be paid. Failure to pay these premiums by the end of the grace period stated in the written instructions may result in loss of health coverage.

An employee who fails to return to work, or who does not work for at least 30 days following the expiration of the unpaid family or medical leave, shall be required to reimburse the City of Hampton for the portion of the health care premiums paid by the city during the unpaid leave. Reimbursement is required unless the employee can establish that the failure to return was due to the continuation, recurrence, or onset of a serious health condition which meets the criteria for leave under this policy, or was due to other circumstances beyond the employee's control. The city may request medical certification if the employee is unable to return due to a serious health condition.

An employee who wishes to continue coverage in the city's dental or vision care plans while on unpaid FMLA leave must pay their regular cost for the coverage.

X. RESTORATION OF BENEFITS AND POSITION AT CONCLUSION OF LEAVE:

At the conclusion of an employee's family and medical leave, the employee will be returned to the position that the employee held prior to taking the leave. If that position is not available, the employee will be placed in an alternative position that is equivalent in pay, conditions, and terms of employment as the employee's prior position. When the employee returns to active work following the family or medical leave, any benefits which have lapsed during the leave shall be reinstated as if the employee had remained actively employed during the leave. However, an employee has no greater rights to reinstatement or to other benefits, seniority, and conditions of

employment than if the employee had been actively employed during the family and medical leave period.

In certain limited circumstances, the city may not be able to restore a “key employee” to his/her prior position because of serious and grievous injury to the operation of the organization.

XI. CONTINUATION OF LEAVE:

An employee who wishes to take more leave than provided by the family and medical leave policy must request leave pursuant to another city leave or leave without pay policy. The reinstatement of an employee, and the employee’s right to continue group health coverage by only paying the employee portion of the premiums are, however, protected for the twelve (12) workweeks of family and medical leave.